HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.170 of 2006

Sanjeev Singh S/o Shri B.S.Arya
R/o 45 national road
Laxman Chowk, Dehradun
District Dehradun .....Applicant

Versus

1. State of Uttaranchal
2. Sanjay Rastogi, Chief Executive
   Quantum Communications
   201/H1 Vikramaditya Tower
   Alaknanda Shopping Complex
   New Delhi .....Respondent

Dated :- 10.03.2006

Hon'ble J. C. S. Rawat, J.

1) The petition under section 482 Cr.P.C. has been filed for quashing the chargesheet as well as the cognizance order dated 8.6.2005 passed by the Chief Judicial Magistrate, Dehradun in case No.1008/2005 State Vs. Sanjeev Singh under section 420 IPC.

2) Brief facts of the case are that the respondent No.2 made a complaint on 28.2.2005 to the SSP, Dehradun for lodging an FIR at police station Patel Nagar, Dehradun against the applicant under section 420 IPC stating therein that the applicant opened a bank account in the Oriental Bank of Commerce having account No.87 in the name of Quantum Communications. It has been further alleged that the applicant collected an amount of Rs.1.8 lakh from various clients in the government and private sectors. The applicant operated the said account and misappropriated the amount. Thereafter, the matter was investigated and a chargesheet was submitted before the court. The Magistrate took cognizance against the applicant vide order dated

08.06.2005. Feeling aggrieved, the applicant has come up before this Court.

3) I have heard Sri Lok Pal Singh learned counsel for the applicant and Sri G.S. Sandhu learned A.G.A.

4) It was contended on behalf of the applicant that the applicant has not committed any offence and he has been falsely implicated in the case. It was further contended that the complainant has given him authority to act on behalf of the company and there was an agreement between the applicant and the respondent No. 2 that the applicant will do the needful and settle the business of Quantum Communications by opening a branch office at his residence and after collecting the money from the clients he will withdraw the same for expenses. Learned A.G.A. refuted the contention. Perusal of the record reveals that the applicant was authorised to liaison with various departments for procuring business, collect payment through cheque/demand draft in favour of Quantum Communications. There is no averment by which the applicant has been authorized to open an account in the name of Quantum Communications and to operate the same. The applicant was only authorized to collect money, cheques and drafts from the clients. The applicant was not authorised to withdraw the amount from the account of Quantum Communications. In absence of such authority in writing, it cannot be held that he was authorized to operate the said account opened by him. Moreover, it has been proved that there was no consent to open an account and to withdrawn the amount from the said account.

5) It was contended on behalf of the applicant that he was entitled to open an account and also to withdraw the amount from that account. This is a disputed question of fact, which has to be decided during the trial. This court cannot evaluate the disputed facts of the case. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

6) It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

7) In view of the foregoing discussion, the petition lack merit and is liable to be dismissed.

(J. C. S. RAWAT, J.)

Dated 10.03.2006

LSR